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7 Attorneys for Defendant
UNITED STATES FIRE INSURANCE COMPANY

10 IN THE UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 (OAKLAND DIVISION)

14 LENSCRAFTERS, INC.; and EYEXAM
OF CALIFORNIA, INC.;

Plaintiffs,

VS.

18 LIBERTY MUTUAL FIRE INSURANCE
COMPANY; EXECUTIVE RISK
SPECIALTY INSURANCE COMPANY;
19 UNITED STATES FIRE INSURANCE
COMPANY; MARKEL AMERICAN
INSURANCE COMPANY; and
20 WESTCHESTER FIRE INSURANCE
COMPANY.
21

22 Defendants.

Case No. C-07-2853 SBA
The Honorable Saundra B. Armstrong

E-FILING

**NOTICE OF MOTION AND MOTION BY
UNITED STATES FIRE INSURANCE
COMPANY TO DISMISS OR, IN THE
ALTERNATIVE, STAY CROSS-CLAIMS IN
FAVOR OF PRIOR-PENDING NEW YORK
STATE COURT ACTION**

Date: September 18, 2007
Time: 1:00 p.m.
Courtroom: 3

1 ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to its stipulation with MARKEL AMERICAN
 3 INSURANCE COMPANY ("Markel") and WESTCHESTER FIRE INSURANCE COMPANY
 4 ("Westchester") and in satisfaction of its obligation to respond to their newly-filed cross-claims,
 5 UNITED STATES FIRE INSURANCE COMPANY ("U.S. Fire") files this notice of motion and
 6 motion to dismiss, or in the alternative stay, the cross-claims of Markel and Westchester. On
 7 September 18, 2007 at 1:00 p.m., or as soon thereafter as counsel can be heard in the above-
 8 entitled Court located at 1301 Clay Street, Courtroom 3, Oakland, California, defendant U.S. Fire
 9 will and hereby does move to dismiss, or in the alternative stay, the cross-claims as part of its
 10 motion to stay or dismiss this entire action in favor of the prior-filed action -- proceeding on the
 11 same issues of contract interpretation and involving the same parties -- currently pending in New
 12 York State Court. This motion is based upon this Notice of Motion and Motion, as well as upon
 13 the Memorandum of Points and Authorities, the Request for Judicial Notice, the declaration of
 14 Amy E. Rose and the exhibits thereto filed and served on July 18, 2007 and such other evidence
 15 or oral argument as may be presented to the Court at the hearing on this motion.

16
 17 Dated: August 7, 2007

SQUIRE, SANDERS & DEMPSEY L.L.P.

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 19 By: /s/ Amy E. Rose
 20 Amy E. Rose
 21 Attorneys for Defendant
 22 UNITED STATES FIRE INSURANCE
 23 COMPANY
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PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is One Maritime Plaza, Third Floor, San Francisco, California 94111-3492.

On August 7, 2007, I served the following document described as:

**NOTICE OF MOTION AND MOTION BY UNITED STATES FIRE INSURANCE
COMPANY TO DISMISS OR, IN THE ALTERNATIVE, STAY CROSS-CLAIMS IN
FAVOR OF PRIOR-PENDING NEW YORK STATE COURT ACTION**

- VIA THE UNITED STATES DISTRICT COURT ELECTRONIC FILING SERVICE on interested parties in this action as set forth below:

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Executed on August 7, 2007, at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Amy E. Rose
Amy E. Rose